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IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,
Plaintiffs,
vs.
R.J. REYNOLDS TOBACCO
COMPANY, et al.,
Defendants.
_____/

Miami-Dade County Courthouse
Miami, Florida
Wednesday, 9:55 a.m.
October 21, 1998

TRIAL - VOLUME 101

The above-styled cause came on for trial before the Honorable Robert Paul Kaye, Circuit Judge, pursuant to notice.

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APPEARANCES:
STANLEY M. ROSENBLATT, ESQ.
SUSAN ROSENBLATT, ESQ.
On behalf of Plaintiffs
DECHERT PRICE & RHOADS
ROBERT C. HEIM, ESQ.
SEAN P. WAJERT, ESQ.
On behalf of Defendant Philip Morris
COLL DAVIDSON CARTER SMITH SALTER & BARKETT
NORMAN A. COLL, ESQ.
On behalf of Defendant Philip Morris
ZACK KOSNITZKY
STEPHEN N. ZACK, ESQ.
On behalf of Defendant Philip Morris
CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER
R. BENJAMINE REID, ESQ.
On behalf of Defendant R.J. Reynolds
KING & SPALDING
RICHARD A. SCHNEIDER, ESQ.
MICHAEL RUSS, ESQ.
On behalf of Defendant Brown & Williamson
CLARKE SILVERGLATE WILLIAMS & MONTGOMERY
KELLY ANNE LUTHER, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group
SHOOK HARDY & BACON
EDWARD A. MOSS, ESQ.
WILLIAM P. GERAGHTY, ESQ.
On behalf of Defendant Brown & Williamson
JAMES T. NEWSOM, ESQ.
On behalf of Defendant Lorillard
DEBEVOISE & PLIMPTON
JOSEPH R. MOODHE, ESQ.
ANNE COHEN, ESQ.
On behalf of Defendant The Council for Tobacco Research

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(APPEARANCES - Continued)

GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL
DAVID L. ROSS, ESQ.
On behalf of Defendant Lorillard
MARTINEZ & GUTIERREZ
JOSE MARTINEZ, ESQ.
On behalf of Defendant Dosal Tobacco Corp.
and Tobacco Institute
KASOWITZ BENSON TORRES & FRIEDMAN
NANCY STRAUB, ESQ.
DAVID MARKS, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group

WITNESS INDEX

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Direct Examination by Mr. Rosenblatt:
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(Whereupon, the following proceedings were had:)

(The jury entered the courtroom.)

THE COURT: All right. Be seated.

You will learn throughout the course of this trial that apparently time doesn't mean anything. No matter how hard I try, I can never get underway at a given moment. We try, but something always comes up which either delays things or causes a problem. And it's relatively expected.

We're dealing with a lot of people, a lot of folks and there's a lot of issues. Sometimes something comes up at the very last minute that we have to take care of as lawyers before we get into the actual mechanics of the trial. And a situation came up today like that. And just so that you folks will understand, it was just an issue regarding one of the jurors and some work problems at his office. So, we straightened that out.

So, that's why we've been a little bit delayed.

All right. Yesterday completed the opening statements. And as you were told yesterday that counsel for the plaintiff would now start presenting his case, and that's the position that we're in now, so I'm going to ask counsel to call your first witness.

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MR. ROSENBLATT: Your Honor, the plaintiff will call as their first witness Dr. Julius Richmond.

Thereupon:

JULIUS B. RICHMOND, M.D.

having been called as a witness, was duly sworn, examined, and testified as follows:

DIRECT EXAMINATION

BY MR. ROSENBLATT:

Q. Dr. Richmond, please state your full name and your present professional address.

A. Julius B. Richmond. The Department of Social Medicine, Harvard Medical School at 641 Huntington Avenue in Boston.

Q. Now, you are a medical doctor?

A. Yes.

Q. And your specialty, you practice a specialty?

A. Pediatrics, child psychiatry and public health.

Q. Now, when did you get your M.D. degree, in what year?

A. In 1939.

Q. So, next year in 1999 you will have been a medical doctor for 60 years?

A. That's correct.

Q. Now, what I intend to do, Dr. Richmond,

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before I go through your curriculum vitae and we discuss with the jury in detail your medical education, background and training, I'd like to discuss initially with you your tenure as Surgeon General of the United States and ask you how was it that you were appointed.

In other words, how were you notified that the President of the United States wants to appoint you and what is the process before you actually become the Surgeon General?

A. Well, I was on the faculty, as I've indicated, at the Harvard Medical School in 1977 when I received a phone call from the then secretary of the Department of Health, Education and Welfare, Mr. Joseph Califano, asking if I would come to Washington to discuss with him my acceptance of appointment as Assistant Secretary for Health and Surgeon General, two

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positions simultaneously.
And so I came -- I should add I was not seeking the position. And after Mr. Califano explained what he was interested in asking me to do and with the concurrence of then President Carter, because these are presidential appointments, both of these positions.
Q. By both of these, you mean Surgeon General and Assistant Secretary?
A. In health.

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Q. Health, Education and Welfare?
A. Yes. So, at President Carter's request, then I decided to accept the appointments as Assistant Secretary for health and Surgeon General.
Q. Dr. Richmond, is the appointment to the position of Surgeon General and Assistant Secretary in the Department of Health, Education and Welfare, does that require Senate confirmation?
A. Yes, both of those positions, and I was confirmed.
Q. By the United States Senate?
A. By the United States Senate.
Q. They hold hearings?
A. Yes.
Q. You have to testify?
A. That's correct.
Q. They investigate you?
A. I presume they investigated me.
Q. Tell the ladies and gentlemen of the jury during what time frame were you the Surgeon General of the United States?
A. I served during the Carter administration, so I served from 1977 to 1981. I served virtually four years.
Q. Okay. So, in the next presidential election

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Carter was beaten by Reagan?
A. That's correct.
Q. And Reagan, President Reagan obviously had the opportunity to appoint a Surgeon General of his choice?
A. He did. But I was ready to go home.
Q. You were not unhappy?
A. Four years is a long time in that position.
Q. Now --

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A. I should add, it never came to the point of whether President Reagan would appoint me or not. I elected to go home.

Q. Now, when you were Surgeon General of the United States up until early 1981 --

A. That's correct, May, May 1st.

Q. -- May of 1981 the department was called Department of Health and Human Services -- no, I'm sorry, it was called the Department of Health, Education and Welfare and then the name changed?

A. While I was Surgeon General and Assistant Secretary, at almost the mid point in that period, the title of the department changed from the Department of Health, Education and Welfare to the Department of Health and Human Services.

Q. And it's retained that name right up until

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today?

A. That's correct.

Q. Now, you mentioned the initiating phone call from Secretary Joseph Califano. The Secretary of Health, Education and Welfare, the Secretary of Health and Human Services, that is a cabinet position, correct?

A. That is correct.

Q. Like Secretary of State or Secretary of Defense?

A. That's correct.

Q. It's part of the President's cabinet?

A. That's correct.

Q. I mean, in basic terms, was Califano, Secretary Califano, your boss, your superior?

A. He was my immediate superior, but I was, of course, a presidential appointment and responsible to the President.

Q. Now, over the years, have most Surgeon General held both positions, in other words, Surgeon General and Assistant Secretary for Health and Human Services or have those positions been split up?

A. No. I was the only one who's ever held both titles until just a few months ago when the current appointee, Dr. David Sacher, was appointed Assistant

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Secretary for health and Surgeon General. So, the two

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of us are the only two that have ever simultaneously
held those two titles.
Q. Well, with respect to the title of Assistant
Secretary for Health, Education and Welfare, does that
somehow broaden the scope of your function as Surgeon
General, and if so, how?
A. Yes, the title Assistant Secretary for Health
is the title which by law has all of the policy making
responsibilities. That position was established in
1966.
And at that point, the Surgeon General became
largely the presiding official over what is called the
Commissioned Corps of the United States Public Health
Service. So, that's a narrower responsibility. And
the Assistant Secretary for Health has the broader
policy responsibilities for all health issues.
Q. I guess, you know, the average citizen
certainly has heard of Surgeon General and knows the
Surgeon General is a doctor. But what is the -- what
is the job description of the Surgeon General?
In other words, you're appointed Surgeon
General, and what are you supposed to do basically?
A. Well, after the establishment of the
assistant secretary-ship, the Surgeon General's primary

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responsibility is essentially as the commanding officer
of the Commissioned Corps of the Public Health Service.
That represents about 6,000 people out of a total of
about 50,000 employees. But in addition, the Surgeon
General has the responsibility, as assigned by the
Assistant Secretary, for making public statements,
public appearances and contributing to the development
of health policies for the nation.
But the final responsibilities reside in the
Assistant Secretary for Health and the secretary of the
Department of Health and Human Services.
Q. Can everyone hear the doctor okay?
I hear you fine, but, you know, at times, but
I don't know how great that mike is.

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Dr. Richmond, what I intend to do now is to go through your curriculum vitae. I don't know that the jury has heard that expression before. But doctors that have been around a while and particularly doctors who practice a specialty and doctors who have written articles, they all have a curriculum vitae?

A. Over 60 years, yes.

Q. What is a curriculum vitae in general?

A. That's just a listing of all of one's professional education and background and professional appointments both in universities and hospitals as well

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as all of the organizations, professional organizations that one may have belonged to, as well as the various kinds of recognition that goes with it. And usually with a curriculum vitae there's the accompanying bibliography which lists all of the writings, published writings of the person.

Q. Well, for example, Dr. Richmond, in looking at your curriculum vitae there's a listing of 143 publications that you have either been the author of or coauthored. And naturally it's not my intention to go through all of them, but I will go through some of them.

Starting at the beginning, not the very beginning, but starting at the beginning of your medical career, you said you became an M.D. in 1939.

What medical school had you attended?

A. The University of Illinois in Chicago.

Q. Okay. Now, back then and probably right up until today if a man or a woman gets an M.D. degree and they just want to practice like general medicine, they don't want to be a specialist in any orthopedic surgery, neurological surgery, pediatrics or whatever, in your day back in '39, in order for an M.D. to have put out their shingle, would they have had to have served an internship somewhere?

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A. Yes. During that time the requirement was that one would have completed satisfactorily

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service as
an intern.
Q. And that's usually a one-year internship?
A. Well, in that era, they were moving toward
two-year internships. Mine I split the difference, I
was a year and a half.
Q. And then -- by the way, when you were in medical school, when you got your M.D. degree, had you
already decided that you wanted to specialize in pediatrics?
A. Yes, I did.
Q. So after you got your M.D. degree, you completed the year and a half of internship, so in order to achieve your goal of becoming a pediatrician,
what more did you have to do in terms of formal education or training?
A. Well, I was required to complete that specialization to take a residency in pediatrics, which
I proceeded to do at the same hospital at which I was
an intern, which was the Cook County Hospital in Chicago.
Q. In Chicago?
A. That's correct.
Q. You were born in Chicago?

A. That's correct.
Q. Now, in looking at your curriculum vitae in
terms of licensure and certification you mention in
1947 you got American Board of Pediatric Certificate
Number 2603. What is the significance of the American
Board of Pediatrics and your having achieved a certificate?
A. Well, that means that one has satisfactorily
completed an approved residency. There is an American
Board of Pediatrics that's part of the board of specialties, medical specialties in the United States.
And one would have had to have completed the residency
training satisfactorily and then passed an examination
before certification.
Q. Is that the same or something different from
the concept known as a doctor who is board certified in
a particular specialty? Are we talking about --
A. No, that is --
Q. That's it. So, you became board

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certified in
20 the specialty of pediatrics in 1947?
21 A. That's correct.
22 Q. And now --
23 A. The interval between my having completed
the
24 internship, merely part of the residency, the
reason I
25 didn't take the examination for certification
until '47

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1 was because of service during World War II when I
was
2 in service for four years, the four years that we
were
3 in the war.
4 Q. In the early 40s during World War II?
5 A. Right.
6 Q. Now, if a general practitioner who has
merely
7 completed an internship, never had a residency and
is
8 not a specialist, such a doctor has a right to see
and
9 treat children. I mean, that's perfectly legal,
isn't
10 it?
11 A. That's correct.
12 Q. And --
13 A. That is, if he's licensed by the state,
he or
14 she is licensed by the state.
15 Q. But they don't have to be board
certified?
16 A. That's correct.
17 Q. And by the same token, can a doctor
practice
18 the specialty of pediatrics even though they are
not
19 board certified in pediatrics?
20 A. They can, but they would not be
recognized as
21 a board certified physician.
22 Q. But I mean, if parents chose to take
their
23 children, they have that right?
24 A. That's correct.
25 Q. Now, I want to go over some of your
academic

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1 appointments, because throughout your career you
have
2 been involved in teaching at a variety of medical
3 institutions, correct?
4 A. That's correct.
5 Q. As a matter of fact, you mentioned when
you
6 got the call about the nomination to become
Surgeon
7 General you were at Harvard?
8 A. That's correct.

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Q. You started your teaching career at the University of Illinois Medical School, correct?
A. Yes. Yes.
Q. Okay. And now, just tell us, tell us generally the time frame and your general duties when you were at the University of Illinois Medical School.
A. Well, I started at the University of Illinois as an assistant professor of pediatrics in 1947. And between 1947 and 1953 I moved through the rank of associate professor and attained, when I was, I think, 33 years of age, the rank of full professor of pediatrics at the University of Illinois College of Medicine.
Q. In terms, in terms of the hierarchy in a medical school, when they talk about professors, the highest is a full professor?
A. That's correct.

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Q. And what's the lowest?
A. Instructor.
Q. And then what's next?
A. Assistant professor, associate professor, professor.
Q. And then full professor?
A. That's correct.
Q. Now, I notice in your C.V. that you mentioned from 1949 to 1953 you were a lecturer in the biology of human development, psychoanalytic child care cause, Institute for Psychoanalysis in Chicago. In a general way, what did that involve?
A. Well, there was a program at the Chicago Institute for Psychoanalysis, which is an institute that trains psychiatrists in the field of psychoanalysis. That institute had set up a course to train nonpsychiatrists in psychiatric and psychoanalytic principles related to the care of children.
And that included psychologists, social workers, pediatricians, as I've indicated, educators, teachers were enrolled in those courses. And I lectured in those courses on the biological development of the child, the psychological development of the child, the medical implications of the development of

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the child, the problems that children might face and all.

It was a general orientation to what we thought of as interdisciplinary group of practitioners.

Q. I'm trying to go in sequence and to put this in kind of a frame work. As I look at your C.V., you were with the University of Illinois Medical School from 1946 until 1953?

A. That's correct.

Q. And in 1953, you went to a new medical school?

A. That's correct.

Q. Which was the State University of New York, Upstate Medical Center in Syracuse?

A. That's correct.

Q. Syracuse, New York.

And you became chairman and professor of the department of pediatrics from 1953 to 1965.

A. That's correct.

Q. Now, that time -- well, that's about, that's like a 12-year time frame?

A. Right.

Q. Tell us generally what that involved.

A. Well, when I went there I went there to redevelop that department of pediatrics, it was a small

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department, and this was a period in which the State University of New York was trying to grow and meet the demands in the state for medical education.

And so I went there to expand the department, to enhance its training program and particularly to enhance its residency training program. So over those years there was a considerable expansion of that department.

Q. And then, after that 12-year period from 1965 to 1970, you were the dean of the -- dean of the medical faculty and chairman of the department of pediatrics.

How did becoming the dean of the medical faculty change your duties and responsibilities, if it did?

A. Well, I retained the responsibilities for the department of pediatrics, but I became the dean. That meant I had to delegate a moderate amount of my

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activity in the department of pediatrics to a deputy whom I had while I assumed the responsibility for the overall development of the medical school.

Q. If you can remember, approximately how many physicians were in the department of pediatrics at the State University of New York in Syracuse when you were the dean?

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A. Well, we went from when I came there to -- to I'm referring to full-time salaried position to in 1965 approximately 25 pediatricians.

Q. Now, so we've covered your relationship to the University of Illinois Medical School. We went through the time that you were dean of the medical faculty at the State University of New York. What was the next medical school that you had any affiliation with?

A. In 1971 I moved to the Harvard Medical School, and I became the director of the Judge Baker Children's Center, which is a psychiatric clinic for children, and became chief of the department of psychiatry at the Children's Hospital in Boston. And shortly after I assumed those positions, as well as professor of psychiatry and human development at the Harvard Medical School, shortly thereafter I was also asked to assume the chairmanship of the department of preventive and social medicine. And so I held two professorships at that time.

Q. So basically have we covered the three medical schools that you've been affiliated with in the course of your professional career?

A. That's correct.

Q. You started at Harvard -- I just want to

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paint the big picture first, and then I'll go back and pick up some specifics. You began your career at the Harvard Medical School in Boston in 1971?

A. That's correct.

Q. And at the time you were appointed Surgeon

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General of the United States, you were at the Harvard Medical School?

A. That's correct.

Q. After you left your position as Surgeon General of the United States, you went back to the Harvard Medical School?

A. That's correct.

Q. Are you retired at the present time or do you still have an affiliation with the Harvard Medical School?

A. Well, in 1988 I became professor emeritus, but I still have an office in the department of social medicine and I still teach actively, carry on professional activities there.

Q. Now, you mentioned and your C.V. reflects, you were professor and chairman of the department of preventive and social medicine at the Harvard Medical School. What does that mean, preventive and social medicine?

A. Well, that is a department that has the

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responsibility for teaching to the medical students issues related to social conditions, like poverty and its influence on health. And with a great emphasis, and that's the prevention, the preventive part on preventing disease, particularly to try to minimize those social factors like poverty that have an impact on disease.

Q. Because from the standpoint of a pediatrician, kids who are poor, kids who are malnourished would have a tendency to have more psychological and physical problems --

A. That's correct.

Q. -- than kids who are better off?

A. And I had been working in that area for many years, and that led me to take a leave from the State University of New York to come to Washington.

Q. I'll get to that in a minute. You're talking about the Head Start Program?

A. That's correct.

Q. I'll get to that in a minute.

Now, from 1983 to 1988 your curriculum vitae describes yourself professor of health policy and departments of health policy and management and maternal and child health in aging in the Harvard

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School of Public Health.

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Why, as a pediatrician, would you have any involvement or concern with maternal health, the health of mothers?

A. Well, pediatricians ordinarily have a deep interest in the health of mothers, their nutrition, their mental state, their capacities to really bear children and hopefully to bear healthy children. So that in schools of public health, maternal and child health are tied together in one department.

So, in contrast to the medical school in the school of public health, obstetricians and pediatricians and other child health workers are really part of the same department. And at that time, issues related to aging were also under the jurisdiction of that department.

Q. Now, Dr. Richmond, when you were at the University of Illinois Medical School, when you were with the New York medical school and with the Harvard Medical School, at all three of these medical schools, in addition to your teaching responsibilities, did you have hospital appointments?

A. Yes. Because one can't really teach a clinical discipline like pediatrics without having patients.

Q. That's what I want to get clear. Because

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obviously, when people hear about a professor, an image comes to mind, you're in a classroom and a bunch of students are in front of you and you're teaching. But I want to know in terms of your teaching responsibilities and in terms of your active overall hands-on practice, how did those connect and how did it work?

A. Well, clinical professors in all fields, roughly the last two years of medical school, the students are taught by example and taught through supervised practice. And so, professors of pediatrics,

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obstetrics and gynecology, surgery, medicine and all of the other clinical disciplines are very active clinicians. And they really need to be very deeply involved in clinical practice in order to teach medical students and residents effectively. And so I was no exception. I was an active clinician seeing patients with students in residence usually.

Q. And did you yourself actually take care of patients?

A. Oh, yes, through that entire period of time.

Q. Is it fair to say that teaching medical students to become good doctors, they have to see sick patients, they have to make diagnoses, they have to institute treatment hopefully that will cure the

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problem?

A. That's correct. But in pediatrics, we also want to be sure they see well children as well so they can understand the normal growth and development of children. So pediatrics residents are not exclusively assigned to hospital patients.

Q. Now, you had mentioned, and I see from your curriculum vitae, that in 1965, 1966, you were the national director of Project Head Start in the office of economic opportunity. And that was in Washington, D.C.?

A. Yes, that's correct.

Q. Tell us the background of your involvement, how you became the national director of Project Head Start and tell us what Head Start was.

A. Well, the war on poverty, which was initiated in the latter part of 1964, was an effort by President Johnson to try to alleviate the problems of poverty. And so, the legislation was passed to establish the office of economic opportunity to launch what in popular terms became the war on poverty.

President Johnson recruited Mr. Sergent Shriver to be the director of that office. And Mr. Shriver was concerned that we ought to do something

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about children growing up in poverty to see if we

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couldn't do something to foster their optimal development.

And he was aware, because he had been interested through his position of the executive director of the Kennedy Foundation, in the development of children, because the Kennedy Foundation was particularly interested in mental retardation. And he had known of the research work that I and a colleague Dr. Betty Caldwell were doing in Syracuse when I was at the State University of New York.

And what we had demonstrated in our publications was that poor children growing up in environments of poverty seemed to undergo a developmental decline by our usual tests. And so we set a daycare program to care for these children in a stimulating, wholesome environment. And what we found was that we could prevent this decline.

And it was just as we were concluding this work, it was just accidental that these two things happened at the same time that the war on poverty was taking shape. And Mr. Shriver had known of our work. And so I found myself being challenged by Mr. Shriver to see if we couldn't do something for poor children in the United States.

And so, I took leave from my position at the

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State University of New York, went to Washington and within a few months we initiated a program which in the first summer -- it started as a summer program. It's now a year-round program for preschool for children. And in that first summer, we succeeded in enrolling 500,000 children in 2700 communities.

Q. Half a million kids?

A. Half a million children in 2700 communities across the nation. That was about, it was about half of the eligible children in the United States. That program, as I indicated, has become a year-round program. Very pleased to say that by now some 16

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million children have gone through that program.
Q. Head Start still exists?
A. Still exists.
Q. At the present time?
A. 750,000 children are enrolled each year. I should emphasize that it's not just early childhood education, but it's a comprehensive child development program which provides health and nutrition services as well as early childhood education, oral health and the involvement of parents, social services and particularly what we call empowerment of the local community, because these programs are actually run by local community groups, people who come from the

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communities in which the children live.
Q. Now, you had mentioned Sergent Shriver who had the head position in Washington, and I'm sure that name sounds familiar to a lot of people. He was married to one of President Kennedy's sisters, correct?
A. Yes, Eunice, Eunice Kennedy Shriver.
Q. And he was the vice-president candidate on the McGovern ticket?
A. That's correct.
Q. Which didn't do so good?
A. That's correct, ill-fated.
Q. Now, there are a lot of categories in your C.V., honorary degrees, a whole list of honors and awards.
Now, the pin in your lapel -- Dr. Richmond, and obviously I'm not going through all the awards, because that would take a long time -- what does the pin in your lapel signify?
A. That's for the David E. Rogers Award, which is awarded by the Association of American Medical Colleges. That's the association of the heads, the deans of all of the medical schools of the United States and Canada. And the Robert Wood Johnson Foundation has funded an award for a medical educator whose main career has been in medical education, but

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who has done significant things to improve the health of the American people.

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So, I was awarded this. It's in the name of David Rogers, who had been a dean at the Johns Hopkins Medical School and then became the first president of the Robert Wood Johnson Foundation in Princeton, New Jersey.

Q. Now, I'm looking at a publication from April of this year where you are pictured with the present Surgeon General Dr. Sacher and a young student who is the recipient of the first Julius B. Richmond Young Leader in Public Health Award given by the United States Public Health Service.

Tell us what that award is and how it came about.

A. Well, the director of the regional office in Boston of the United States Public Health Service thought, to stimulate greater interest in public health among young people, that they should establish an award and they asked me if I would permit my name to be used to designate the award.

And so, this was the first such award to a young student at the Harvard School of Public Health it so happens. But all of the schools of public health in the area were eligible to submit nominees. And that

award was given at the site of the U.S. Constitution.

Q. Now, the jury in this case, as the testimony comes forward from both sides, is going to hear about a lot of medical journals, such as the New England Journal of Medicine, the Journal of the American Medical Association.

We come to a category in your C.V. where the heading is editorial boards. For example, you say you were a member of the editorial board of a publication called Pediatrics from 1956 to 1961.

And first of all, I'd like you to explain to the jury in a general way what the member of the editorial board of a publication such as Pediatrics

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does?
A. Members of the editorial board meet periodically to discuss policies related to the publication of the journal, what the trends are, what kinds of publications we should be seeking. And members of the board are also used to do what we call peer review.
To review papers that come to the journal to see whether they're appropriately, they are presenting appropriately designed studies, and the analysis of these studies are reliable and valid so that that's the general responsibility of people on the editorial

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board.
Q. Is it fair to say that, with respect to the publications where you have been on the editorial board, that there are a great many more submissions by doctors who would like to have their articles in the publication that are rejected as opposed to those that are accepted and actually published?
A. Yes, that's generally the case with journals that that's part of the peer review that many -- although occasionally there may be a reasonably good article, but in the competitive situation, there's only so much space. So, that's another function of the editorial board along with the editors to make judgments as to which of those publications get published.
What I'm suggesting is some papers could pass peer review, but not get into the journal.
Q. Even though they're good --
A. That's correct.
Q. You're also on many editorial boards. The other one I'm going to mention is the Harvard Review of Psychiatry?
A. Yes.
Q. What type of publication is that?
A. That is a publication that is put out by the

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faculty of the department of psychiatry of the Harvard Medical School. And it has submissions not alone from the Harvard faculty, but psychiatrists and other

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health
professionals from anywhere can submit to that publication.
Q. Now, Dr. Richmond, on Page 14 of your curriculum vitae, you have a heading which is called major research interests, and you list four. And I would just like you to tell the jury briefly what each one involves.
Number one is child development.
A. Yes. Over the course of my career, I have been interested in how children grow and develop. And particularly their psychological and social growth.
And to some extent, that's what -- really that interest led me into my observations with my colleague, Dr. Caldwell, of what was happening to children who were growing up in poverty.
So, that is an effort to look at the psychological and the social development of children.
But being a pediatrician, I also was very interested in their physical development, their nutrition. And so I have written in those areas as well.
Q. And your second major research interest is in the field of maternal and child health.

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A. Yes, and that's a related interest. And that involves work in fields like infant mortality, prematurity and all of the issues related to how maternal health influences the development of babies and their subsequent development.
Q. And then the third broad category in terms of your major research interests is child psychiatry. I think you've probably already discussed that.
A. Yes. I've had training in psychiatry along with my pediatrics. And that's why, when I went to the Harvard Medical School, I went to the medical school as a professor of child psychiatry.
Q. And the fourth page or interest is in the field of public policy and public health?
A. Yes, because of my involvements in the field of public health over the last 30 years of my career

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and because of my public responsibilities in Washington on two occasions, when I came back from Washington, after having served as Assistant Secretary for Health and Surgeon General, they asked me to assume the professorship of health policy. And I have written a book on American medicine and the evolution of health policy issues in the United States. But subsequently I, of course, have followed with great interest and written on the development of our health care system.

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Q. Now, I am going to ask you specifically about a few of the 243 articles, but generally speaking, has most of your writing and research been done within these four areas of child development, maternal and child health, child psychiatry and health policy and public health?

A. Yes. I think those are the general areas.

Q. And by the same token, some of the articles I'm going to talk about specifically, did you have to submit your articles to an editorial board and wait for approval?

A. Yes. I think in virtually all of the published journal articles, they were subject to what we call peer review. That is an editorial board asks its consultants to critically review the publications.

Q. In 1954 you did an article which appeared in public health reports, the title of which was, Self Understanding for Parents of Handicapped Children.

Just in a general way, what was the main thrust of that article?

A. Well, at that time, I was very concerned because we hadn't had, in most of our teaching programs across the country, any programs that prepared pediatricians to help parents deal better with children who had handicapping conditions. And so I had done an

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analysis of what I called how parents adapt to the

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unfortunate circumstances of having a child with a handicapping condition.

Q. Did that cover both physical and mental handicaps?

A. Both.

Q. Then I see there's an article you did called, A Program for the Study of Children with Psychosomatic Disorders.

What is a psychosomatic disorder?

A. Well, a psychosomatic disorder is one that relates to what we think of as mind/body relationships, of psychological problems that may result in the disturbance in some organ's function. So, I had been observing, during that period, some unusual clinical problems of children, one of which is the syndrome that we speak of as rumination, when a child regurgitates and reswallows food.

And until we had made these observations, it had not been recognized that really, with a stimulating and favorable psychological environment, this syndrome would disappear.

So, I was very interested in my research at that time in studying how the mind and body interact. And that led me to a whole series of publications on

how the autonomic function or what we call the sympathetic nervous system develops. Among adults we think of it as heartburn can be this sort of thing, some forms of colitis, for example, can be some psychosomatic disorders.

Q. What was the thrust of the article which was published in the journal Pediatrics, the title of which was, Some Psychological Considerations in Adoption Practices?

A. Well, I had been interested in studying how parents and children bond. In popular terminology, we call that bonding. In professional terminology, we think of that as attachment behavior. And I was interested in how adoptive parents come to develop attachments to their children.

Because one couldn't study that

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17 experimentally in human children, I had studied
18 adoption in sheep and goats, published papers on
that.
19 It's actually quite possible, for example, to get
a
20 goat to adopt a lamb and vice versa if one wants
to do
21 this.
22 So, I was interested in understanding
that
23 attachment process between parents and children
and, of
24 course, that's what adoption is really about is
how one
25 can foster that bonding.

11167
1 Q. Bonding meaning a good, decent
2 relationship --
3 A. Relationship, yes.
4 Q. -- between parents that are not the
natural
5 parents.
6 The article, another article that
appeared in
7 Pediatrics, the title of which is, The
Pediatrician and
8 the Individual Delinquent, what was that all
about?
9 A. Well, because of my interests in child
10 psychiatry, I became interested in children with
11 deviations, children who developed some problems
that
12 brought them to the attention of the courts. And
13 that's how children get labeled as delinquents.
14 And we had responsibility in our
department
15 of pediatrics, for example, in children who had
come to
16 the attention of the courts. And what we found
was
17 that they not alone had many psychological
problems,
18 but many children who came to the attention of the
19 courts also had many physical problems,
particularly
20 neurological problems that had never been attended
to.
21 And so, that was an effort to bring to
the
22 attention of pediatricians the importance of
complete
23 physical examinations of delinquents and
collaborating
24 with the psychiatrists and the social workers
working
25 with the juvenile courts all across the country to

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1 provide better care for those children.
2 Q. And hopefully create a situation where
they
3 won't be delinquents anymore?

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A. One would hope.
Q. You did an article in 1970, the title of which was, Disadvantaged Children, What have They Compelled us to Learn?
What have they compelled us to learn?
A. Well, that was a paper I published in the Yale Journal of Biology and Medicine. And that was a paper which summarized a lot of the observations that I've already mentioned of children who are growing up in environments of poverty. And so we label that, those children, as growing up in disadvantaged environments.
And what those children essentially enabled us, helped us to learn, was that if children were in favorable environments, they would grow optimally. And if we permitted them to remain in these disadvantaged environments, they would show what we call developmental attrition. That's that downward trend in development in these young children.
So, what I described in that paper was essentially the kinds of daycare programs that Dr. Caldwell and I have developed that would provide an

opportunity for these children to develop in what is essentially a normal kind of fashion.
Q. Dr. Richmond, I'm almost done with your 38-page curriculum vitae, just a couple of more questions.
Now, in addition to the many, many articles that you've done in your career, you've also written some books.
A. Yes.
Q. Yearbook of Pediatrics, and I think that you did subsequent editions of that book?
A. Yes. That was an edited volume which we provide commentaries on articles in the pediatric literature, yes.
Q. A book called Diseases of Children.
A. Yes, that's --
Q. Worldbook Encyclopedia?
A. Yes. That's more a chapter in a book.
Q. And you either edited or wrote a chapter or a book, you tell us, but the title is Mental Retardation, a Handbook for the Primary Physician?
A. Yes. That was a book that I edited for the

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23 American Medical Association that was published by the
24 American Medical Association. But I wrote some of it,
25 but it's a compilation. The basic book that I wrote in

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1 pediatrics is titled Pediatric Diagnosis with my
2 collaborator, Dr. Morris Green. And that continues to
3 appear, and it's now coming into its sixth edition.
4 Q. Just dealing with the general topic of how
5 doctors in private practice who are not part of the
6 academic, who are not connected with the medical
7 school, just they have an office, they treat patients,
8 and how a doctor in that position can have access to
9 the state-of-the-art literature put out by the best
10 doctors in the country, do the journals and textbooks
11 serve that purpose where a general practitioner can go
12 look things up?
13 A. Well, the textbooks are the basic source of
14 information. But the journals tend to be more up to
15 date, present the more recent research findings. And
16 so physicians have to have access to what we call the
17 current literature, the current journals so that they
18 can stay up to date.
19 But I should also add that virtually all of
20 the states now require credits for what we call
21 continuing medical education so that all of these
22 practitioners must show evidence that they're spending
23 a certain amount of time, certain number of hours a
24 year trying to stay current in the medical practice.
25 Q. Now, you mentioned your four years in World

11171
1 War II, you were a flight surgeon?
2 A. Yes, I was a flight surgeon.
3 Q. In your experience in World War II, did the
4 tobacco companies hand out free cigarettes with food
5 that the soldiers, that the sailors, that the air force
6 people got?

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Was that the custom during World War II?
A. Yes. Usually with what I think were called the K-rations. I'm not sure the companies of those cigarettes. But they were issued as part of the rations.
Q. Now, in the early '40s there were no warnings on the package of cigarettes, were there?
A. No.
Q. In the early '40s, there was -- was there any information to the general public on the subject of addiction?
A. Not in connection with cigarette smoking.
Q. Dr. Richmond, I want to start to ask you some questions about the 1979 Surgeon General's Report.
Big book. About how many pages?
A. I think 1100 or something like that.
Q. Over a thousand pages?
A. Yes.
Q. What was the purpose generally of the 1979

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Surgeon General's Report?
A. Well, the first Surgeon General's Report was issued on January 11th of 1964. So, 1979 would mark the 15th anniversary of the first Surgeon General's Report on smoking and health.
It was a report of the Surgeon General's Advisory Committee on Smoking and Health. And I had made the judgment that, in that 15-year period, it would be well to summarize the literature of the world in relationship to smoking and health and to do that in one volume.
And we then embarked on a program to issue that report on the 15th anniversary date, January 11th of 1979.
Q. Okay. So, what you're saying is this Surgeon General's -- Smoking and Health, a report of the Surgeon General of 1979, was given to Congress on what, January 11, '79?
A. January 11th, and released to the public.
Q. And released to the public. Although, do you ever get many requests from just ordinary civilians

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22 saying, hey, I'd love to read the '79 Surgeon General's
23 Report?
24 A. No, I don't think it was exactly popular
25 reading.

11173
1 Q. Not easy reading?
2 A. But I don't think it's bedtime reading either.
3 either.
4 Q. Before you got to this, before you got to
5 January of '79 and were in a position to give this book
6 to Congress and to the public, how much time in terms
7 of preparation and planning went into this?
8 A. The planning took approximately a year,
9 because we had to identify authors for the various
10 chapters and arrange for the proper reviews of all of
11 the existing literature. So, we started about a year
12 in advance.
13 Q. Tell us, tell us generally how a Surgeon
14 General's Report is put together. Obviously you're the
15 Surgeon General of the United States in 1979, but you
16 didn't write all this?
17 A. That's correct.
18 Q. A lot of people were involved in the writing
19 of the 1100 --
20 A. That's correct.
21 Q. Tell us about that process.
22 MR. HEIM: Your Honor, may we have a brief
23 sidebar?
24 (The following proceedings were had at
25 sidebar:)

11174
1 MR. HEIM: Your Honor, my understanding was
2 that, before we got into the '79 Surgeon General
3 reports or any of these reports, we were going to take
4 a break and talk about where we were going with this.
5 Because we have lots of objections here.
6 MR. ROSENBLATT: That's fine, fine. My
7 intention was to ask some preliminary questions before
8 I offered it. But now is as good as any. It was going
9 to be five minutes, but it doesn't matter.
10 THE COURT: So, we'll take an extended break.
11 (The sidebar conference was concluded, and
12 the following proceedings were held in open court:)

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THE COURT: All right. It's a little bit after 11:00, and you folks have been very good up to this point. So, let's take a break at this time. Leave your pads on the seat. Turn them over, upside-down, so we can't read them. Adjourn to the jury room, but please don't discuss the case or reach any conclusions.

(The jury exited the courtroom.)

THE COURT: You folks may be seated or you may leave.

MR. ROSENBLATT: Could the lawyers take a break?

THE COURT: Yes.

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Are you going to want the doctor on the stand during the conversation?

MR. ROSS: I think we should excuse him.

THE COURT: We'll excuse him for that purpose. Okay. We'll take a short recess.

(Recess)

THE COURT: Okay. What do you want to talk about?

MR. HEIM: Well, Your Honor, they have given us a list this morning of the documents that they want to use with Dr. Richmond.

We have objections to much of them, if not all of them, on lots of grounds including some of which, some of which are for some documents that they've never given us any notice of before, zero. This is the first time today that they appear on the list for Dr. Richmond. But we can go through them one by one, I guess.

THE COURT: This is the kind of thing I was hoping we would be able to do the Fridays before the week of the --

MS. ROSENBLATT: That's what we're doing from this point forward, Your Honor. We've set for Friday a lot of exhibits, so we have that with a lot of the witnesses.

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We did disclose -- in fact, we had many, many more documents for Dr. Richmond. When Your Honor indicated last Friday by 5 p.m. for both Ron Davis

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and
Dr. Richmond, we then obtained over the weekend -- because of the many objections and the delay it would cause, we made it much smaller.

To my knowledge, everything has been disclosed. In fact, we reduced them. I'm not aware of what counsel is referring to, but we should go one by one. And I think the first is the Surgeon General's Report.

I've given another copy of these to defense counsel, but they have already copied our exhibits. Ordinarily, I'm not intending as we go along each time -- I'm giving the Court a copy because you don't have them. But the defense has disclosed the exhibit number, they've copied the exhibits.

So, unless Your Honor wants me to each time, I'm not intending to give copies again of the exhibits to the defendants.

THE COURT: If they've already got them, that's fine. That's not the problem.

MR. HEIM: The problem is they have to tell us which ones. That's the problem.

THE COURT: Right now we've got a list here.

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There are 17 enumerated documents. I think I've got them all here. I'm not really sure. But probably do. We can go over it. The only thing is it's going to take some time.

MR. ROSENBLATT: Let me make this suggestion, Judge. As a practical matter, after you make your ruling on the Surgeon General's Report and if you allow it in, that will probably take us to lunch.

THE COURT: Right now about 11:30.

MR. ROSENBLATT: So, we may have an opportunity. I'm just saying maybe rather than do everything now, just deal with --

MS. ROSENBLATT: Well, The Frank Statement, which I believe the defense had listed as well for opening, I don't think there's an issue as to The Frank Statement. That one, which is the first one, Exhibit 18, and the Surgeon General's Report, the only dispute

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on the Surgeon General's Report would be whether it's 100 percent or 90 percent coming in.

When Your Honor had indicated when we had a witness that was involved and wrote and edited it and we could lay a predicate to a particular report, it would come in. We have internal grounds on awareness and knowledge that we say it should come in 100 percent.

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If we take care of The Frank Statement and the Surgeon General's Report --

THE COURT: Let's talk about those two.

MR. HEIM: Let's start with the Surgeon General's Report. And I gather what counsel is referring to is the 1979 Surgeon General's Report.

MS. ROSENBLATT: Correct.

MR. HEIM: Now, those two we did have notice about. Our objection to The Frank Statement with this witness, with Dr. Richmond, who was in private practice or teaching up until 1979 when he became Surgeon General, is that The Frank Statement was not relied upon by him, it's not relevant to any of his testimony about the 1979 Surgeon General Report or any other part of his testimony.

He has no personal knowledge about it. He's called here as an expert, and it has no relevance to Dr. Richmond. It's just a spurious issue.

MR. MARTINEZ: Your Honor, as to Dosal, we object. We weren't even in existence.

MR. REID: There's also no evidence that any class member relied on it, saw it, knew about it, heard of it. So, it would be irrelevant on that basis as well.

MR. HEIM: And the final reason is that when

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we were -- when Dr. Engle was deposed in March, he was asked: What documents are you going to rely on for your trial testimony?

And he said: I'm going to rely on Surgeon

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General Reports -- I'm sorry. Dr. Richmond.
He said: I'm going to rely on Surgeon General Reports, and I'm going to rely on certain Tobacco Institute documents that have been provided to me from a law firm.
The understanding that we had, and I think it's part of the Court's order, is that you can't change that at the last minute. Suddenly at the last minute he's relying on The Frank Statement for his expert testimony, Your Honor.
It's not an issue of reliance. The Frank Statement is a key document that was listed by both sides for opening statement. It was addressed extensively by both sides during opening statement.
And it, amongst other things, establishes the undertaking of a duty, responsibility on the part of these defendants to cooperate and provide assistance and work closely with public health officials for the good of the American people.
Both sides went into it. Mr. Heim explained extensively how they complied with that Frank Statement

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and how they did cooperate with public health officials.
Well, throughout Dr. Richmond's deposition, he was asked and he gave numerous instances where he asked for cooperation and cooperation was denied.
So, certainly we're not asking to introduce The Frank Statement through him. We can introduce The Frank Statement now. We could introduce it Friday.
But we want it in evidence so that, when we refer to it, it's appropriate and it's in evidence. He has testimony that's highly relevant as to The Frank Statement.
MR. HEIM: Your Honor, not every witness can testify about every document. He's called here as an expert as the Surgeon General. There may be witnesses that can testify about The Frank Statement.
He can testify as to what happened when he was Surgeon General and whether he thinks -- what the

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facts are with regard to his tenure as Surgeon General, but he cannot go back to 1954 and pick up a document that he had no participation in, didn't rely on and expressly said in his deposition he wasn't relying on to provide testimony here as an expert. He made that statement in his deposition.

MR. ROSS: Your Honor, there's one other point. I'm sorry. We have so many people talking.

But Ms. Rosenblatt made one other statement. She said: The Frank Statement is an underpinning of a duty. The law is clear in Florida that one does not undertake a legal duty to the public by publishing something in the newspaper.

This is no allegation that there is some special duty. There is what's known as the Good Samaritan rule in Florida, which I think Your Honor is probably familiar with. That's when you stop and somebody is laying on the street and you bend down and you say I'm going to help you.

And the Courts have held, under those circumstances, when you make a personal promise to someone, you undertook a legal duty.

But there's case law, case law around the country in other tobacco cases that there is no legal duty assumed by merely the publishing of something like a Frank Statement in a newspaper. I don't have those cases with me at the moment, but I can have them over here shortly. There is the first time I've heard that statement.

MS. ROSENBLATT: Your Honor, I think I can satisfy any objections. I looked in the index under Frank Statement, question on Page 107 by defense counsel: I want to switch to your supplemental expert statement, and you say that you will testify as to the lack of cooperation between the tobacco industry and state and Federal Governmental agencies.

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And then it goes on to say, which is relevant under all counts as to the duty owed by the tobacco companies pursuant to The Frank Statement to smokers in 1954: What is the lack of cooperation that you are talking about?

Answer: When I asked for data from industry representatives, I got no cooperation. And more pointedly, when I asked for information concerning additives and the manipulation of additives in cigarettes, I got no cooperation.

And it goes on and on about that. So he did review The Frank Statement, he referred to it in his disclosure, and the argument is it's simply factually erroneous.

THE COURT: Who was doing the questioning?

MS. ROSENBLATT: The questioning is by Mr. McConnell, who is a lawyer at Mr. Heim's law firm on behalf of Philip Morris.

MR. HEIM: And that is a discovery deposition taken prior to trial about what his testimony is. But in the same deposition early on it's what documents are

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you going to rely on, Doctor? And he does not rely on the Frank Statement.

He's relying generally on the fact that he -- and he has testified before that, in his opinion, the tobacco industry didn't cooperate with him.

That has nothing to do with the admissibility of The Frank Statement.

THE COURT: Well, I can hardly see where The Frank Statement would not be admissible, to be perfectly honest with you, as an undertaking by the defense.

I'll admit it and overrule the objection on its admissibility. It can be used with this doctor if you make reference to it or knows what he's talking about pursuant to that deposition statement. As only to the signatories. That ought to take care of Liggett

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and Dosal.
Okay. What else?
MS. ROSENBLATT: The objection as to the Surgeon General.
THE COURT: The objection is overruled.
MS. ROSENBLATT: The Surgeon General Report is the only other one right now we're doing.
MR. HEIM: Well, our objection as we made before and I believe Your Honor ruled on October 8th,

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1998, is that the Surgeon General's Reports are hearsay. They're a conduit for the introduction of inadmissible evidence. And under the Florida Rules of Evidence, you can't put the Surgeon General's Report into evidence.
MS. ROSENBLATT: I believe, Your Honor, you ruled that it would be done on a witness by witness basis based upon that particular expert's involvement with the Surgeon General Report. And quite candidly, if there's a report -- if we had no witness with any involvement with any aspect of it -- we have a problem based on what Your Honor stated.
You did state that, I want to just add -- I don't have time to circulate this. But based on the opening statements and based on some further reflection on this issue of awareness and knowledge, I think each of the -- and I'll just deal with this particular Surgeon General's Report, the 1969 report in its entirety, I think it will be clear from the testimony of Dr. Richmond that he was involved in that report, every page of that report, in the selection process, in editing, in writing.
This was his report, and this was something when he was Surgeon General of the United States. And the testimony will establish that.

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But furthermore, Your Honor, during opening statement, the defendants stressed this concept of smokers' awareness of the addictiveness of

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nicotine,
smoker's awareness of issues of smoking and health,
consumer expectations about cigarettes during the past
decades without any time restrictions, without
limitations to 1970 or anything to that extent.
And there were allegations that anyone who
can quit, can quit, and that there were references to
newspapers and media articles about the various U.S.
Surgeon Generals' Reports, how they were publicized,
how people knew about them and so forth. And certainly
the reports themselves are the best evidence of what
people knew or didn't know about.
And one example of how it could be very
relevant on awareness would be in the '79 report there
is no finding, per se, that nicotine and smoking is
addictive. And in terms of consumer awareness and
expectations, that is highly relevant and that didn't
occur until 1988.
So, in terms of what they knew, that
undermines a lot of what the defense is saying about
everybody knew, because that is certainly relevant as
to what they -- as to what they knew.
THE COURT: I think it's premature at this

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time to talk about the admissibility of it. The Court
can recognize the Surgeon General's Report of 1969 as
the Surgeon General's Report of 1969. There is no
other report to which it could be confused.
The use of it and the method by which it can
be utilized by the Court will have to be determined
after an interrogation of Dr. Richmond as to his
participation in it. As you say, if he either
prepared, reviewed or edited every single page, that's
one thing. If he only wrote a forward, that's another
thing. And if he's not familiar with the content,
that's another thing.
So, we have to wait until we hear from him.
Mark it as an exhibit for identification purposes.
MS. ROSENBLATT: I wanted to state now so we
don't delay the process later, in addition to

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that,
just as all of the various Readers' Digest and reference which were -- the issue of knowledge is equally applicable here because there have been statements, and I'll give you one example, in opening by Mr. Moss: I suggest if nothing else comes through from the evidence you hear in this case, it has been known that smoking carries the risk of disease and smoking can be difficult to quit, it has been known for decades and decades.

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The evidence of what is known and not known by consumers, by smokers, is certainly reflected in the reports.

And secondly, the knowledge of the tobacco industry, as to the defendants, as to the position of the government, is extremely important to our case, knowledge, not necessarily truth.

THE COURT: I think we're being premature at this point.

MS. ROSENBLATT: Okay.

THE COURT: Let's first establish his relationship with the report. If you want to use the report to prove a negative is basically what you're saying --

MS. ROSENBLATT: An awareness.

THE COURT: -- then that may come in the second stage.

MS. ROSENBLATT: Down the road. Okay.

THE COURT: Under those circumstances, we'll mark it as an exhibit for identification purposes and then you can utilize it in your questioning of the doctor to establish his relationship with it. And we'll try to finish up that kind of testimony, then pick up some of these other matters either before or after lunch.

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MR. HEIM: I think Your Honor made the point I was trying to make. To the extent there's awareness information in there, the plaintiffs aren't trying to prove awareness, they're trying to prove the negative

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of awareness.
THE COURT: That's what I understood the argument to be at that point. But there's other things that he may be very well aware of, and I don't know how that's going to play out.
I want to go back to The Frank Statement. I made a statement for Dosal and Liggett that the ruling would be effective only as to the signatories, and you folks weren't signatories of it.
MR. MARTINEZ: I don't care if you announce that. I want to make it clear that it doesn't come in against us.
THE COURT: The reason I say that is, if the evidence turns out that there has been some approval of it or adoption of it by you folks due to the evidence, then I'm going to leave my door open. I don't know if that's going to be or not. But I'm not making a blanket statement that's forever.
MR. MARTINEZ: Very unlikely, but I suppose it's conceivable somehow.
THE COURT: I'm trying to cover all bases.

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MR. MARTINEZ: But it would seem to me that they have the obligation to prove the adoption as opposed to leaving it in limbo forever.
THE COURT: All right. Let's bring back Dr. Richmond and the jury.
(The jury entered the courtroom.)
THE COURT: You may be seated when you get in your chairs, folks.
All right. Let's proceed.
BY MR. ROSENBLATT:
Q. Dr. Richmond, I think I was asking you before the break to explain to the jury how, from a practical standpoint a Surgeon General's Report is put together. And as you explain that, specifically with respect to the 1979 Surgeon General's Report, tell us your involvement with these various things.
A. Well, when we made the judgment to have a 15th anniversary report, I had, as the director of the office of smoking and health, a Mr. John Penny.

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And he
then had the responsibility for working with me in
developing the outline chapter headings for these,
for
the report. And what we then proceeded to do was
to
arrange to have a variety of consultants prepare
chapters, some 22 chapters related to the issues
of
smoking and health. And we then sought the people
who

11190
were regarded nationally as having the greatest
expertise in developing those chapters.
Q. So, for example, if there was a chapter
on
lung cancer, if there was a chapter specifically
on
another form of cancer, a bladder cancer, whatever
it
might be, you sought out the most qualified
scientists
and medical doctors in the country to contribute
their
area of specialty to that particular chapter?
MR. HEIM: Objection.
THE WITNESS: That is correct.
MR. HEIM: It's leading the witness,
Your
Honor.
THE COURT: It is leading. It's also
summation. Don't lead.
BY MR. ROSENBLATT:
Q. Okay. After having made the selection,
what
was the next step in terms of when would you see a
finished product on a given chapter?
A. Well, we would usually specify the date
by
which we would like to see the manuscript for such
a
chapter. And this was done, that is, the
deadlines
were set in relationship to peer review. And much
as I
described in relationship to medical journals
generally, we then would designate a panel of
reviewers
to critically review the manuscripts which had
been

11191
prepared by the original authors. And there, too,
we
sought the people who had the greatest expertise
in the
area of that particular chapter.
And after we received their critiques,
we
then would send those critiques back to the
author,
sometimes we would assemble the authors and the

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reviewers to discuss critical issues in relationship to the final product.

And in the end, I personally then reviewed all of the chapters. And only after I felt confident that they reflected the state of the art and the state of the science of that particular time did we accept the chapters for final publication.

Q. Dr. Richmond, did you personally read every word that's in the 1979 Surgeon General's Report?

A. I have to acknowledge that I did.

Q. Who had the final word? Now, you talked about 22 chapters, 22 scientific papers, who had the final word as to whether a particular chapter would, in fact, be included in the final version of the Surgeon General's Report?

A. I had that final responsibility. Occasionally I would consult with authors or some of the critiques that reviewers -- or the reviewers of the critiques to satisfy myself that we were dealing with

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the most current data and opinions in connection with those chapters.

But the final determination of what would go into the volume was mine.

THE COURT: Can I interrupt for just one second here, just a point? Is everybody unplugged?

BY MR. ROSENBLATT:

Q. Dr. Richmond, at the very beginning of the 1979 Surgeon General's Report within the first few pages there is a preface consisting of several pages. It's dated January 11, 1979. And at the end appears your name, Julius B. Richmond, M.D., Assistant Secretary for Health and Surgeon General. Did you write that preface?

A. Yes, I did.

Q. Did you write every word of that preface?

A. Yes, I did.

Q. I would like now to ask Dr. Richmond specific questions about what's in the preface. I intend to --

THE COURT: Go ahead.

BY MR. ROSENBLATT:

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Q. You begin by saying, "On January 11, 1964, the Surgeon General's advisory committee on smoking and health concluded cigarette smoking is a health hazard of sufficient importance in the United States to

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warrant appropriate remedial action. Today, this report reinforces that major conclusion. It is backed up by the weight of thousands of additional studies performed throughout the world. Fifteen years later the scientific evidence on the health hazards of smoking, of cigarette smoking is overwhelming. Each year the health damage resulting from cigarette smoking costs this nation an estimated 27 billion dollars in medical care --"

MR. HEIM: Your Honor, I have an objection to this, reading the Surgeon General's Report.

THE COURT: I think he's going to read a portion of it, then ask a question about that part that he read.

MR. ROSENBLATT: Correct.

MR. HEIM: I'll wait until he asks the question.

BY MR. ROSENBLATT:

Q. Each year the health damage resulting from cigarette smoking costs this nation an estimated 27 billion dollars in medical care, absenteeism, decreased work productivity and accidents. In 1979 cigarette smoking is the single most important preventible environmental factor contributing to illness, disability and death in the United States."

11194

Now, my question to you, sir, is, on what information were you basing the conclusion that you wrote in your preface, quote, in 1979 cigarette smoking is the single most important preventible environmental factor contributing to illness, disability and death in the United States, what were you basing that on?

MR. HEIM: Objection, Your Honor, for the reasons that I cited before.

THE COURT: Overruled.

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THE WITNESS: The conclusion was based on what we knew then about the effects of cigarette smoking on human health. And the fact that the approximately 430,000 deaths from cigarette smoking annually constituted the largest group of deaths that one could attribute to a single cause caused me to conclude that this was the single most preventible cause of death. And I might add that that remains to this day the single most preventible cause of death. So it was true then, it's true today.

Q. Nineteen years ago it was true and today it's true?

MR. HEIM: Objection.

THE WITNESS: Correct.

THE COURT: Repetitious. Sustained.

BY MR. ROSENBLATT:

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Q. Other topics in your preface, in terms of headings, women and smoking, children and teenagers, minorities, smoking and occupational exposure, cigarette smoking behavior and public policy. What were you intending to convey to the reader in terms of your preface and those particular topics?

A. Well, we were trying to convey to the reader and to the nation the fact that, for example, one of the first topics you mentioned, women and smoking, at the time we rendered that report, breast cancer was a more frequent cause of death among women than lung cancer. And what we highlighted in this report as one example is the fact that if women continued to increase their rates of smoking, that lung cancer would exceed breast cancer as a cause of death among women. Which unfortunately has happened. We were predicting that it would happen, but we were suggesting there could be preventive approaches to this if we could convince women not to increase their rates of smoking.

Q. Amongst -- I'm sorry.

A. So that was just one example of our trying to highlight a trend which we felt needed to be reversed in order to conserve human lives. And so in

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relationship to smoking and adolescents, we were concerned about the fact that young people were smoking

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in increasing numbers and that most smokers start in adolescence. And we ought to try to reverse those trends. We were concerned about smoking and minority groups, because we knew that minority groups tended to smoke at higher rates than the rest of the population. And, again, in a preventive effort we thought that it would be very important if we could reverse that trend.

Then we, of course, were interested in what are the behavioral implications? Because smoking in the last analysis is a human behavior, and how we could deal with trying to minimize that kind of behavior among people. And then in relationship to public policy we, of course, were interested in setting into motion public policies and public awareness campaigns that would minimize this kind of health hazard.

So, what we were trying to do was reverse what in terms of the health of the public was a very important trend. And that was the 430,000 deaths per year from smoking.

MR. HEIM: Your Honor, may we approach briefly?

THE COURT: Yes.

(The following proceedings were had at sidebar:)

MR. HEIM: Your Honor, not only is this

11197

witness just being a conduit for objectionable hearsay, but he is extending in his answer well beyond the question and making comments about things well beyond his expertise, such as what the leading cause of mortality is today.

That has nothing to do with his 1979 Surgeon General's Report. He has no qualifications to offer that opinion. And so, you know, I renew my objection to letting him just go by virtue of saying he was the person who read every page of it, say whatever he wants. Because it is a conduit. But I especially

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object to him going well beyond the question and going well beyond his tenure as Surgeon General and responding to questions.

MR. REID: Your Honor, if I could add, the document speaks for itself. He's reading the document, then describing, "what I really meant," "what I was thinking about," and all these other conclusions that aren't necessarily in the document.

Furthermore, as he's going into issues about minorities and women and other sub-groups, and any sub-group by definition cannot be included in the phase one trial.

So, testimony regarding minorities, testimony regarding women or any other sub-group is irrelevant.

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And finally, I think it's inappropriate just to have counsel start reading. I mean, for instance, he mentioned the number 27 billion dollars. That has nothing to do with this case.

I didn't know he was going to blurt that out until it was already out. That's completely irrelevant to this case. That was the A.G. case or something else, but not this case. That's the problem of this process of just picking a document up and reading along and saying, what do you mean by that?

I think he ought to tell us ahead of time what he's going to publish. We have a pretrial order that requires designation of published documents.

THE COURT: I don't think he needs to give you a script.

MS. ROSENBLATT: This is the highest public health official in the country who was in charge of and prepared a Surgeon General's Report. He's explaining to the jury, which I believe is his right, what the purpose of the report was, what it was intended to accomplish, and I find it really amazing when the defense counsel talked about the billions of dollars they paid in taxes and hundreds of thousands of

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jobs,
24 that they're suddenly saying that the health care costs
25 and deaths isn't relevant.

11199
1 It's talking out of both sides of their
2 mouth. They got into really collateral issues. These
3 issues are addressed, and it's something that was a
4 concern to Dr. Richmond and I believe through his C.V.
5 the predicate has been established. He's certainly
6 eminently qualified, and it's very relevant to the
7 case.
8 MR. HEIM: It's about playing fairly under
9 the rules. You can't have somebody who is Surgeon
10 General from 1979 to 1981 testify about things that are
11 beyond his expertise and beyond his qualifications.
12 MR. ROSENBLATT: He's a public health
13 specialist in addition to being a pediatrician.
14 MS. ROSENBLATT: In 1998.
15 MR. ROSENBLATT: That's why I spent so much
16 time. Medicine is his -- social medicine is his field
17 at Harvard.
18 THE COURT: Overrule the objections.
19 (The sidebar conference was concluded, and
20 the following proceedings were held in open court:)
21 (The record was read by the reporter.)
22 BY MR. ROSENBLATT:
23 Q. Do you remember, Dr. Richmond, where you
24 wanted to continue or should I ask another question?
25 A. No. I think I had concluded my comments,

11200
1 yes.
2 Q. When did lung cancer amongst women overtake
3 breast cancer as the number one cause of cancer death
4 among women in this country, do you remember the year?
5 A. It was around 1984, '85.
6 Q. Has that remained true until the present
7 time?
8 A. That's correct.
9 Q. Lung cancer --
10 A. Lung cancer causes more deaths among women
11 than breast cancer.
12 Q. What's the leading cause of cancer death
13 among men in this country?

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A. Lung cancer.
Q. In terms of your reviewing these papers, in terms of your preparation of your preface, did you have any interest in analyzing amongst youth why kids take up smoking and do you have any public policy interest in how do you get kids to quit smoking?
MR. REID: Objection, Your Honor.
THE COURT: Overruled. That's sort of compound. Let's take it one at a time.
BY MR. ROSENBLATT:
Q. Let's talk first of your study and analysis of the subject of young people beginning to smoke.

11201

A. Yes. Well, I, because of my work as a pediatrician, I was interested in knowing more about how adolescents came to develop unfortunate health habits. And during my tenure as Surgeon General and our concern about the impact of smoking on health, I was hoping that we could learn more about what motivates youngsters to take up smoking.
I was aware of the fact that there was a good deal of activity on the part of the tobacco industry in making it an attractive habit for young people. And so, I was very interested in encouraging further research, since we didn't have access to the research that the tobacco industry was conducting in relationship to adolescent development and what motivates them to smoke and what makes it attractive for them to smoke.
Q. During your tenure as Surgeon General, did you request data, research information from the tobacco companies about studies and surveys that they had done with respect to youth marketing?
A. Yes. I publicly asked for what their research was in relationship to smoking among young people.
Q. Did they ever give it to you?
A. No. No.

11202

Q. Just refused?
A. Well, it was never forthcoming.
Q. You've seen this before, Dr. Richmond, A Frank Statement?
A. Yes, yes.

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Q. I'm going to ask you in particular about that sentence, which I'll read. That's the sentence I'm focusing in on.

Frank Statement in 1954 says: We always have and always will cooperate closely with those whose task it is to safeguard the public health.

As Surgeon General of the United States, was it your task to safeguard the public health?

A. That was my responsibility.

Q. During your tenure as Surgeon General of the United States, did Philip Morris, R.J. Reynolds, Lorillard, Brown & Williamson, Liggett, did they cooperate closely with you?

MS. LUTHER: Objection, Your Honor.

THE COURT: Sustained as to Liggett. They're not a signatory, as I understand it.

MR. ROSENBLATT: Forget about Liggett.

BY MR. ROSENBLATT:

Q. Philip Morris, R.J. Reynolds, Brown & Williamson and Lorillard.

11203

Did they cooperate closely with you?

A. No. As a matter of fact, they were constantly publicly attacking what we were doing and particularly that report. That is, our 1979 Surgeon General's Report.

BY MR. ROSENBLATT:

Q. What did the tobacco industry have to say. When this came out and this went to the public and this was given to Congress, what did the tobacco industry have to say about this report?

MR. REID: Objection, Your Honor, without further identification.

THE COURT: Sidebar for a second.

(The following proceedings were had at sidebar:)

MR. REID: Your Honor, I object to the question saying what did the tobacco industry say. If he has a specific statement that he wants to ask him about, we can respond to it.

THE COURT: You're going to have to lay some sort of a predicate for that question.

MR. ROSENBLATT: Well, the Tobacco Institute, which is the tobacco industry --

THE COURT: It just came out of the air

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and
25 say that this was said. He must have more
definitive

11204
1 knowledge. That's the point they're getting at,
lay a
2 predicate on that.
3 MR. REID: Also, hearsay at this point
to say
4 they said something.
5 THE COURT: Maybe, maybe not. Depends
where
6 we're going with it, because there are some
documents
7 that we have to talk about. Those documents I've
8 scanned and looked through probably relate to this
9 particular topic we're talking about. And we
haven't
10 discussed those yet.
11 MR. ROSENBLATT: Did you want me to drop
this
12 and come back?
13 THE COURT: We'll have to do that after
we
14 get into these documents. Can you do anything?
Where
15 else are you going to go with this with him?
16 In other words, what I would like to do
is go
17 through the documents, make sure we know which
ones
18 we're going to use and which ones we're not going
to
19 use. It's ten after twelve. If you want to break
for
20 lunch now --
21 MR. ROSENBLATT: Probably makes sense.
22 MR. HEIM: Talk about these documents
that he
23 wants to use.
24 THE COURT: I don't want to use up all
of the
25 lunch hour.

11205
1 MR. ROSENBLATT: Let me ask a procedural
2 question. What happens if a witness might take
until
3 5:30 or 6:00? I'm not suggesting it's going to
happen
4 today. What would you do? Would you be inclined
to
5 have the witness come back the following morning?
6 THE COURT: Forget it. It goes home.
7 MR. ROSENBLATT: Depends on your mood at
8 5:30. Silly question.
9 MR. HEIM: And jurors who want to go
home.
10 THE COURT: Put it this way so we really
all
11 understand. If you're going to be finished with
the

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witness in a reasonable time say between 5 and 6, finish, no problem. Then, of course, if they haven't finished cross, they have to come back the next day.

I don't want to work late into the evening, first of all. It's going to be dark starting not this Friday but next Friday. They're going to change the time. Not a good place for jurors to be at night.

You folks have got a lot of work that you still have to do even in recess. I understand that. And the jury gets pretty tired.

So, we really are shooting for a 5, 6:00 at the very latest type thing. If a juror or -- if he's got to come back or somebody else has got to come back, so be it. They're here until they're finished.

11206

(The sidebar conference was concluded, and the following proceedings were held in open court:)

THE COURT: Folks, we've been talking about scheduling problems being that it's ten after twelve. And rather get into an extensive area where it's inconvenience to break, this might be a good time to take our lunch break.

Let me get you back here at 1:30. We're going to take a little bit longer because the lawyers an I have to do some things anyway. You be back here at 1:30. Same rules apply. Don't discuss the case, don't reach any conclusions, any decisions.

Enjoy your lunch and come back here.

(The jury exited the courtroom.)

THE COURT: All right. You all can be at ease. Those of you who want to stay are certainly welcome. Those who want to leave, go ahead.

Dr. Richmond, you'll have to remain outside. Please come back at 130.

Basically, we're in recess at this point, give you a chance to get your thoughts together.

(Discussion off the record.)

MR. HEIM: Your Honor, sorry for the delay.

We're going to try to simplify this, move it

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along so everybody can get to lunch.

11207

Your Honor, with regard to almost all -- in fact, I think all of the rest of the documents that the plaintiffs plan to use with Dr. Richmond, except for the last one on the list, which are copies of newspaper articles, are Tobacco Institute, loosely-speaking, documents.

Now, what our position is on this is this: We are not going to object to Tobacco Institute publications where we were given notice, where we were given notice by plaintiffs' counsel that they were going to use the document.

For example, Number 3031, which is the very first one that Your Honor would have to deal with, we were given notice that they were going to use that document.

Even though the notice, the one we had been given before this was marked draft, this one that we were given this morning is not marked draft. So, I'm going to assume that it was not a draft, so I'm not going to object to it.

MR. MARTINEZ: Can I supplement that for one second, as T.I.'s counsel? On the cover of this one, there is what appears to be a stamp. We don't want stamps from other cases or stamps put on there by anybody else to go to the jury. And we don't know

11208

where that came from, a stamp on the front page. I don't know where that's from. I don't know if that's printed on it or not.

THE COURT: The one that reads: This document was prepared for disposition to news media one day prior to receipt by the Tobacco Institute of the 1979 report of the Surgeon General on smoking and health --

MS. ROSENBLATT: That appears on the original and it appears to be the way it was -- if I could hand it to Your Honor.

THE COURT: I saw it.

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MS. ROSENBLATT: It's got the same type.
MR. MARTINEZ: Judge, can I approach to see that?
Okay. I just meant the other stuff like T.I. Minnesota or other numbers from other cases.
THE COURT: I agree with you. Other numbers from other cases ought to be excised and will be before it goes to the jury. The Court will take care of that.
Now, this one is Engle, Plaintiffs' Exhibit Number 3031. We have agreed that those would be the numbers that we would use for exhibits for all documents that are accepted as exhibits. So, that will remain. And some of them I know have several numbers

11209

on them, and we'll excise those. Some make reference to Minnesota.
All right. That takes care of that one. What else?
MR. HEIM: My point about that, Your Honor, is I don't know how they're going to use it. I'm not waiving my right when they go to use it if they point to some part that has no relevance to saying that has nothing to do with it. I'm saying at the moment as a list of documents, I'm not objecting to it, because I don't know how they're going to use it.
Now, I do object strenuously to the next document, 723 and to --
THE COURT: Well, let's find it here.
MR. HEIM: That's Number 4 on your list, Judge, of the one that they handed to you. And to Number 10 on their list, Number 11 on their list, Number 12.
THE COURT: The newspaper things?
MR. HEIM: No. Your Honor, before you look at them, because you don't have to look at them for this purpose, my first objection to these documents. But, Judge, we're starting out this case and we have a rule in this case that I would ask Your Honor to enforce. And it is this: 72 hours before a witness

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appears, we're suppose to be told the documents they're going to use with the witness.

Now, they gave us documents. They told us on Friday this is what we're going to use. They said there might be a few more we'll supplement them on Monday. Didn't get any supplement on Monday.

I didn't know of the list that I'm going to read off to you until I walked into the courtroom today.

They should not be able to use these exhibits with the witness simply because we haven't had any notice.

THE COURT: Had you been given these documents at any other time other than the designation that these would be used with this witness.

MR. HEIM: I'm sure they're on the document list along with thousands and thousands of others. But we can't do a guessing game. The point is, it's to prepare yourself to examine the witness.

THE COURT: I understand what you're saying. Which numbers? Read me the numbers.

MR. HEIM: They are item 4 on the list, which is Exhibit Number 723. Number 5 on the list, which is Exhibit 3859. I'm not sure about 6. 6 was on the list.

11211

The next one is item 10 on the list, Number 1833, Number 11, Number 12, 11 is 777, 12 is 776. 13, 14, which is 1515 and 292.

Okay. 15 is a duplicate of Number 5. But 13 and 14, Number 15 on the list, which is Exhibit 3859. Those are our documents that we had no prior notification whatsoever.

MS. ROSENBLATT: Do you have the two letters I faxed on Dr. Richmond? Because my secretary is getting them. I thought I had them with me. I confirmed and went through last night.

MR. HEIM: Here are the two letters.

THE COURT: I'll tell you what, since we're in that position, you want to check that out. Maybe we can do that after lunch, give you time to check it out.

MS. ROSENBLATT: I think what happened some

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of these have two numbers, because I know that the description --

THE COURT: Why don't you do that. I can see where the confusion might lie.

MS. ROSENBLATT: But these, Your Honor, all of these documents are Tobacco Institute documents relating to this witness and the report, many of these were in evidence even in Broin. I know this is another case, but these were disclosed. These are on the

11212

exhibit list.

And I will confirm when I go back to the office that these were --

MR. HEIM: Your Honor, the point of giving notice is so that counsel can be prepared.

THE COURT: I understand. I'll give you time to review those ones that he talked about there. Maybe we can discuss the others meanwhile. The only thing left then would be the three newspaper articles.

MS. ROSENBLATT: No. I think there's quite a few things left.

THE COURT: There's not that many in here. The ones that I circled were 4, 5, 10, 11, 12, 13, 14 and 15. The others you say --

MS. ROSENBLATT: 6, 7.

THE COURT: You received notice of those.

MR. HEIM: Not 7.

Let's take Number 6 first, Your Honor. We object to Number 6 because it's supposedly remarks of the president of the Tobacco Institute, Mr. Kornegay, at an executive committee meeting. We don't know whether those remarks were ever given. There's been no authentication. These are remarks. It's a draft.

THE COURT: You could say that about every document in the possession of the tobacco industry.

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MR. MARTINEZ: Judge, for the Tobacco Institute, in this particular instance, if you will look at that document, they did not give us a notice to produce and say give us any statements by Mr. Kornegay

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to the executive committee. That might work. This was taken off the Internet.

All this means is it was somewhere in our files. There is nobody here from the Tobacco Institute to say these are the statements made. There is nobody to say they were kept in the ordinary course of business. They were taken over of the Internet. That does not mean that was ever done. There was no authentication whatsoever.

MS. ROSENBLATT: Your Honor, these are documents from the defendants. They're on their stationery. They're germane to the issues. The documents have been on the Internet.

We have asked -- we have requested many, many documents. We have not got a lot of documents. We get them from whatever sources we can, unless they're just changing all the rules when it's clearly reflected that it's their documents. I think they should be admitted into evidence when they're germane to the issues here.

MR. HEIM: Counsel shouldn't make the statement that they've asked for documents and they

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haven't gotten them. We've responded to every document request, and we've made documents available. That's simply a wrong statement.

MR. MARTINEZ: Judge, to argue that something is admissible because it's germane in her mind is a ludicrous statement. I done care how germane it is. It still has to be admissible.

Furthermore, she says it's on our stationery. What is she talking about? There is no stationery. It's on a blank piece of paper. That is a total misstatement.

I understand the zeal to try to get this in evidence. But that's wrong. This is not on our stationery. It's taken off a web site, no authentication, no basis for saying this was ever done.

MS. ROSENBLATT: Bates number, Minnesota tobacco litigation -- they know it's their document. They know these are the remarks of Dr. Kornegay

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who was
19 the president at the time of the Tobacco
Institute.
20 And going that way, then few, if any, documents
would
21 ever get into evidence in any case.
22 MR. MARTINEZ: If anybody doesn't know
the
23 rules, she's right. Anybody that knows the rules
can
24 get it into evidence. But I'm not trying to
change the
25 rules. This is a simple rule. You have to

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1 authenticate documents. This is not changing the
2 rules. This is trying to change the rules because
it's
3 germane. I don't care if it's germane. It's not
4 admissible.
5 THE COURT: I disagree with you.
Overruled.
6 MR. HEIM: We have the same objection to
7 Number 7, Your Honor, so I gather you're going to
8 overrule Number 7 as well.
9 THE COURT: Yes.
10 MR. MARTINEZ: Judge, we certainly would
like
11 to have removed the web site, because I don't want
any
12 of these people to go home and log on to the
Internet.
13 THE COURT: I told you before, anything
14 that's not relevant to the content would be taken
out
15 of the exhibit.
16 MR. MARTINEZ: May I ask specifically
that
17 the stamps that say they're confidential be
removed
18 also? That is not germane to the issues in this
case.
19 THE COURT: Depends who made it
confidential.
20 MR. MARTINEZ: I don't know either.
There's
21 nobody that's going to say why or who stamped
22 confidential on it.
23 THE COURT: I'll discuss that with the
clerk.
24 The ones that we're talking about that we need to
know
25 would be, for example, on this document, which is
214.

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1 Just by happenstance, I happened to see
it,
2 this particular one is the next one down, 000214.
3 MR. MARTINEZ: Yes, sir.
4 THE COURT: You got that?
5 MR. MARTINEZ: No, sir. I haven't found
it.

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Judge, I don't have it in that order, I have to find it, but I know it's here.

THE COURT: Maybe I'll pick out another one. Let's take the one that you're talking about, 211.

Ms. Clerk, when you get to a document of this type, we have here something that's called confidential, blank that out.

Now, we have several stamps on here with numbers on it. The one that we're dealing with would be the one they call T.I. 211, correct?

MR. MARTINEZ: Yes, sir.

THE COURT: All the others say Engle Plaintiffs' Exhibit 211. That remains.

This TIMN 0944, that number is out.

This next number, whatever it may be, is out. At the bottom of the page, it looks like a computer --

MR. MARTINEZ: It's a web site address.

THE COURT: Web site. That's what I'm talking about. That gets blanked out. That will relate to any document that gets into evidence.

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The next one, there's one up in the right-hand corner, stamp in the left-hand corner, that goes out.

And the only thing that remains, got two plaintiff exhibit stamps, one says 000214, that should remain. But the one that says 7219, that's out.

MR. MARTINEZ: That's correct.

THE COURT: As long as we know the procedure.

MR. MARTINEZ: Your Honor, there is one other aspect, and that is your rule that these documents are admissible. We will still object that this witness knows nothing about these documents and --

THE COURT: That's a separate matter.

MR. HEIM: That was the point I was about to make, Your Honor --

THE COURT: If he doesn't recognize it or understand it, then other rules apply.

MR. HEIM: Right. I mean, some of these remarks are to the executive committee. They weren't public remarks. We can take that up at the time the document is offered.

THE COURT: What else? I mean, the same thing applies to most of these. These are inhouse presentations or presentations to certain other groups.

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25 Here is one. Like Number 8 is to a Rotary Club in

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1 Tallahassee.
2 Nine is a memo to another party.
3 MR. HEIM: And we'll have to see, Your Honor,
4 whether this witness has a foundation to talk about
5 these documents or not. I suspect he would not.
6 MS. ROSENBLATT: But right now we'd like to
7 have them admitted. At that point, we'll show it to
8 the witness. If he doesn't identify it and is not
9 familiar, then --
10 MR. MARTINEZ: Judge, there is, for example,
11 one particular document that is in there in two forms.
12 One form, it's straight, and other form it's X'd out
13 and things written in. But you can't have both of
14 them. It doesn't make sense. It's not admissible in
15 both forms.
16 MS. ROSENBLATT: Which documents are those?
17 THE COURT: Kornegay has two documents
18 starting off with waving the flag and all.
19 MS. ROSENBLATT: Are we on his 213?
20 THE COURT: That document of January 25th,
21 1979, that's 211. Then, further on, he does the same
22 speech, but he changes it. He uses the same two
23 paragraphs.
24 MR. MARTINEZ: 211 and 214, they are
25 supposedly the same speech, and our position is --

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1 THE COURT: Not 214.
2 MR. MARTINEZ: But my point is, they are
3 supposedly the same presentation to the same group at
4 the same time, and that's why we say this doesn't show
5 that any of them were actually given.
6 MS. ROSENBLATT: Two different individuals.
7 THE COURT: 214 is a different person.
8 MR. MARTINEZ: But there's another one for
9 him.
10 MR. HEIM: Your Honor, the copy of 211 that I
11 have starts at Page 1 of 14. Then goes to 3 of 14.
12 THE COURT: Don't confuse me right now. Hold
13 on one second.
14 We're talking about the second Kornegay
15 statement of January 15, 1979.

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MS. ROSENBLATT: Which number is that, Your Honor?
THE COURT: 001515.
MR. MARTINEZ: Number 13 on this list.
MS. ROSENBLATT: That's the remarks at a worker's conference, just another publication of statements.
THE COURT: That was one in Orlando.
MS. ROSENBLATT: So, he said some of the same things.

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THE COURT: But talking to another group.
What is that you wanted to say?
MR. HEIM: I was taking a look at Plaintiffs' Exhibit 211.
MS. ROSENBLATT: The numbers on top don't mean anything.
THE COURT: Yes, sir.
MR. HEIM: Well, plaintiffs and counsel just pointed out to me that the numbers on the top don't mean anything, and I can see now how counsel is saying that. Because if you looked at the numbers on top where I was looking, that said 1 of 14, and then it goes 3 of 14.
THE COURT: That's just as they come off the computer. I read it, and it's in context.
MR. HEIM: I think we're up to newspaper articles.
THE COURT: The newspaper articles bother me somewhat.
MS. ROSENBLATT: 213, is that in?
THE COURT: No objection to 213 as it relates to not being presented.
MS. ROSENBLATT: How about Number 9, 1220?
MR. HEIM: Your Honor, we do have an objection to 213. I understand you're overruling it to

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see whether there's a foundation with this witness.
MS. ROSENBLATT: I think we're having it introduced into evidence. Whether we can use it with this witness --
THE COURT: You may use it.
MS. ROSENBLATT: But it's in evidence. I don't want to have to go through this again.

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Number 9,
which is 220, that's not on your list, is the -- T.I.
220.
MR. REID: Could I make one comment about
220?
That's the one that makes reference to discussions about women smokers, and I just want to
reaffirm the objection, what he made at sidebar, which
is anything that's a sub-group of the class, minorities, youth and women.
THE COURT: I'm not going to buy that argument.
MS. ROSENBLATT: And it's also in our complaint, Paragraph 110, a part of the conspiracy.
MR. REID: The other point I just wanted to
make, Your Honor, that this morning when we were handed
the memo of October 20 when we were in your chamber, I
assume it was given to the Court. I think it's somewhat of a problem to have language like "another

pack of lies" and "this document is a pack of lies."
THE COURT: That's not in the record. That's
a hand-out to us.
MR. REID: Well, they gave it to the Court,
and I'm concerned about giving it to the Court with
that kind of language.
THE COURT: If it was submitted for purposes
of the record, I would agree with you. But it really
isn't. And I understand it and I understand it's
rhetoric, and I don't consider those things.
MR. HEIM: We're up to the newspaper articles, Your Honor, which we have numerous hearsay.
THE COURT: I'll sustain on the newspaper
articles at this point. A predicate will have to be
laid for that.
MS. ROSENBLATT: As to, then, 220, that's in?
THE COURT: Yes.
MS. ROSENBLATT: What about -- I don't know
about the list of executive committee meeting. T.I.
221, Number 16 on your list, what about that?
That's the list of the people that

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attended
those meetings, and that's in. And that shows that there are representatives from each of the companies. That's why we wanted that in.

MR. MARTINEZ: But Your Honor, we have a

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separate objection. That's relevance as to that. What is the point of that other than to attempt to inflame the jury that a bunch of people including lawyers were at this meeting?

That is not relevant in any way to any of the issues in this cause. Clearly not relevant to any of the common issues that are allegedly being tried in this first phase.

If it's germane to something, I'd like to hear what it's particularly germane to, because it certainly is not obvious.

THE COURT: It may go to show who had knowledge of.

MS. ROSENBLATT: And also germane to the participants and what we allege was a conspiracy. They actually attended this meeting at the time that they were determining that they would say what we consider to be falsehoods about the Surgeon General's Report.

MR. HEIM: Again, Your Honor, no foundation with this witness for this document.

MR. MARTINEZ: There's no foundation that anything was discussed at this meeting other than these people went to it. Talk about guilt by association.

THE COURT: What do you feel guilty about?

MR. MARTINEZ: They are trying to make it

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guilty because they say it's germane to something.

THE COURT: This is the list of people that met at the executive committee.

MR. MARTINEZ: What is it relevant to?

THE COURT: It may be relevant down the road.

MR. MARTINEZ: They should offer it in evidence then. But now it's not relevant to anything.

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They need to show the authenticity or somehow that it has something to do with something. I mean, the problem is --

THE COURT: I would agree with you. It has no meaning now. It may later. I don't know if he can make it --

MR. HEIM: They can mark it for identification.

THE COURT: Don't have any problem marking for I.D.

Lunch? Mark the newspaper documents for I.D.

MR. MARTINEZ: Can we please come back at quarter of 2:00?

(A lunch recess was taken at 12:45 p.m.)

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